No. 7
Brief of Barber for D. C.
Filed Oct. 11, 1898.

BRIEF FOR APPELLEES.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

No. 7.

DANIEL WILEY, PLAINTIFF IN ERROR,

vs.

D. L. SINKLER, T. D. LANIGAN, AND BENJAMIN ELFE.

In Error from the Circuit Court of the United States for the District of South Carolina.

BRIEF OF WILLIAM A. BARBER,
Attorney General for South Carolina,
Counsel for Appellees.

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STATEMENT OF CASE.

his was an action brought by the plaintiff in error against defendants in error in the Circuit Court of the United States, he recovery of damages against them for wilfully refusing lection officers to allow plaintiff in error to vote in an election Congressman.

he defendants in error interposed an oral demurrer to the plaint upon two grounds:

That the Court had no jurisdiction of the action.

I. That the complaint does not state facts sufficient to con-ute a cause of action.

t the hearing the Circuit Judge sustained the demurrer on second ground, and did not consider the first ground. The

contention is that the Circuit Judge did not err in sustaining the demurrer on the ground stated in his judgment, and that it was also sustainable on the first ground.

ARGUMENT.

First Proposition.

Objection was taken to the complaint by oral demurrer, in accordance with the practice of the State Court under the Code of Procedure.

Section 164 of South Carolina Code: "The only pleading on the part of the defendant is either a demurrer or answer."

Section 165: "The defendant may demur to the complaint when it shall appear upon the face thereof either

"1. That the Court has no jurisdiction of the person of defendant or the subject of the action; or

"2. That the plaintiff has not legal capacity to sue; or

"3. That there is another action pending between the same parties for the same cause; or

"4. That there is a defect of parties plaintiff or defendant; or

"5. That several causes of action have been improperly united; or

"6. That the complaint does not state facts sufficient to constitute a cause of action."

Section 168: "When any of the matters enumerated in Section 195 do not appear upon the face of the complaint, the objection may be taken by answer."

Section 169: "If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action."

Rule 18 of the Rules of Practice for Circuit Courts in South Carolina is as follows:

"A motion to dismiss a complaint on the ground that the complaint does not state facts sufficient to constitute a cause of action, or the answer does not state facts sufficient to constitute a cause

of action, must be in writing, stating wherein the pleading objected to is insufficient."

All other defects, except want of jurisdiction and sufficient statement of facts, are cured by failure to object by demurrer and answer.

Daniels v. *Moses*, 12 S. C., 130.

Objection that complaint does not state facts sufficient to constitute a cause of action may be made orally at any stage of the proceedings.

Hull v. *Young*, 29 S. C., 64.

An objection to the jurisdiction of the Court below, although raised for the first time in the Supreme Court, must be considered and determined.

State v. *Penney*, 19 S. C., 224.

A question of jurisdiction may be raised at any time.

Seigler v. *Coward*, 24 S. C., 122.

Oral demurrer for want of facts in the complaint may be interposed after answer filed.

Booker v. *Smith*, 38 S. C., 228.

Second Proposition.

The Circuit Court had no jurisdiction of this action. The Acts of Congress and State laws provide for the punishment of election officers by indictment, and the United States and State Courts have concurrent jurisdiction. In South Carolina the common law doctrine that a voter who has been denied the right to vote by election officers can bring an action against them for damages has never been adopted; and if no action can be maintained in the State Court, none will lie in the United States Circuit Court.

Section 4, article 1, of U. S. Constitution is as follows: "The times, places, and manners of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

Under this section, the State may make regulations on the subject; Congress may make regulations on the same subject, or

may alter or add to those already made. The paramount character of those made by Congress has the effect to supersede those made by the State, so far as the two are inconsistent, and no further.

Ex parte Siebold, 100 U. S., 386.

Congress has partially regulated the subject of the election of members of Congress. It has provided for the election of Representatives by separate districts; that they shall be elected by ballot; and has also fixed the time of election; and by Sections 5511 to 5514, inclusive, for punishment of fraudulent voting for Representatives, for fraudulent registration, and for violation of duty by election officers in the States.

The States have provided by legislation for all other matters pertaining to registration and holding elections for Representatives, and the same provisions apply to the registration and holding elections for all State and County officers.

When Congress has thus legislated, it is paramount, and supersedes all State legislation; when it has not, the legislation of the States is the law, under the Constitution of the United States.

The effect of the provisions of Sections 5511 to 5514, inclusive, is to give to the United States Court jurisdiction over the officers of the State appointed to carry out the registration laws of the State, and to hold the elections for members of Congress, and they can be punished under the Statutes of the United States for any violation of them by the United States Courts, as well as in the State Courts for violations of the State laws. These sections were intended for the security and protection of elections held for Representatives or Delegates in Congress, but do not impair or restrict the power of the State to punish fraudulent voting in the choice of its electors.

In case of *Ex parte Siebold*, *supra*, the Justice says: "As a general proposition, it is true that Congress has no power to enforce State laws, or to punish State officers for violation of State laws; but when, in the performance of their functions, State officers are called upon to fulfill duties which they owe to the United States as well as the States, has the former no means of compelling such fulfillment? It is the duty of the States to elect Representatives to Congress. The due and fair election of them

is of vital importance to the United States. It is, then, directly interested in the faithful performance by the officers of election of their respective duties. A violation of duty is an offense against the United States, for which the offender is justly amenable to that government. No official position can shelter him from that responsibility. The objection that the laws which are made punishable by Acts of Congress are State laws, and have not been adopted by Congress, is no answer to the power of Congress to impose punishment. It has created additional sanctions for the performance of duties imposed upon ordinary officers of elections, and the imposition of punishment implies a prohibition of the act punished. The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress. Content to have the laws as they are, it is not content with the means provided for their enforcement. It provides additional means for that purpose. It is simply the exercise of the power to make additional regulations."

In *Ex parte Coy*, 127 U. S., 731, the Justice says: "It is, perhaps, past debate that Congress has the power under the Constitution to adopt the laws of the several States respecting the mode of electing the members of Congress, and, as resulting from that power, the right to prescribe punishment for the infractions of the law so adopted. This Court has held more than once that Congress has exercised this power, and has adopted these laws, and with them the officers created under them, making them, for the purpose of the election of members of Congress, its officers, and has added new sanctions to such laws, and subjected such officers to the penalties of these sanctions."

Notwithstanding these decisions, it has not been decided that the Courts of the United States have exclusive jurisdiction for violations of Acts of Congress by election officers of the States in elections for Representatives in Congress.

In the case *In re Green*, 134 U. S., 378, the Justice, delivering the opinion of the Court, says: "The question whether the State has concurrent power with the United States to punish fraudulent voting for Representatives in Congress is not presented by the record before us." *It may be that it has*, and reference is made to the case of *Ex parte Siebold*, *supra*. In this same case

it was held that the State has concurrent power with the United States to punish fraudulent voting for Electors for President.

If it has concurrent power in the one, it clearly has in the other case. The reasoning in the case of *Ex parte Siebold*, *supra*, irresistibly leads to this conclusion.

If the State has concurrent jurisdiction with the United States Courts in violations of the Sections of Revised Statutes of U. S., 5511 to 5514, inclusive, the question arises, *can an action for damages be maintained in the U. S. Courts?* There can be no doubt about criminal actions being instituted in the U. S. Courts.

Section 5515 and other sections of Revised Statutes of U. S. only authorize criminal actions against officers of election for violation of election or registration laws. They make it a criminal offense alone, and no express authority is given to a voter to institute an action for damages, and none by implication.

Section 244 of Revised Statutes of S. C. is as follows: "If any officer, on whom any duty is enjoined in Chapters 10, 11, and 12 of part 1 of these Statutes, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding $500, or imprisonment not exceeding one year."

The State Statute also declares any violation of the registration or election laws a misdemeanor, and does not expressly authorize any action by the voter against the offending officers for damages.

I maintain, then, that no action can be instituted in the State Court by a voter against Managers of Election for damages, for wilful neglect of duty, or for wilfully and corruptly denying him the right to vote. No case can be found in the State Reports. The only remedy has been by indictment and mandamus, and, therefore, the common law remedy of action for damages has never been recognized or allowed in the Courts.

In some of the States, an action on the case has been held to lie against Managers of Election for wilfully and corruptly refusing the vote of a qualified elector, on proof of malice, express or implied.

The leading case is that of *Jenkins* v. *Waldron*, 11 Johnson

(N. Y.), 114. This case is based upon the doctrine laid down in the English case of *Ashby* v. *White*, 2 Ld. Rayn., 938. Justice Spencer, in delivering the opinion, in *Jenkins* v. *Waldron*, says: "The principal case relied on by counsel is that of *Ashby* v. *White*. There the declaration alleged that the rejection of Ashby's vote was done fraudulently and maliciously, and, although the jury found the defendant guilty, the judgment was arrested. This judgment was afterwards reversed in the House of Lords. The first resolution of the Lords states, 'that by the known laws of this kingdom, any freeholder or other person having the right to give his vote at the election of members to serve in Parliament, and being wilfully denied or hindered to do so by the officer who ought to receive the same, may maintain an action in the Queen's Court against such officer, to assert his right and to recover damages for the injury.' The case of *Harrison* v. *Tappenden*, 1 East., 555, clearly shows that this action is not maintainable without stating and proving malice, express or implied, on the part of the officers. In the case in the text, Lawrence, J., said there is no instance of an action of this sort maintained for an act arising from merely error of judgment."

Brightly's Leading Cases on Election, p. 192.

McCrary on Elections, Section 494, says: "The general rule is, that an officer of election, or of registration, who shall wilfully and corruptly refuse to any citizen who is duly qualified the right to vote or register, is liable in damages to the person injured. In several of the States it is regarded as sufficient to show that the plaintiff has been unlawfully deprived of his right, without proof of a malicious or corrupt purpose on the part of the officer; but the general doctrine is as above stated. In those States where no proof of malice is necessary, the plaintiff must allege and prove that he furnished defendants with sufficient evidence of his having the legal qualifications of a voter before defendants refused to receive his vote. This decision comes almost up to the rule as it exists in most of the other States; because if the voter furnished sufficient evidence of his right, that fact would go far to prove wilfulness on the part of the officer who, in the face of such evidence, refuses him the privilege of voting."

The same author says: "That the Massachusetts rule is regarded rather as one for the determination and settlement of the plaintiff's right to vote than as a suit to recover damages." The Massachusetts rule has been followed only in the States of Ohio and Wisconsin.

McCrary on Elections, Sec. 496.

"The weight of authority that malice must be alleged and proved in an action against an election officer is decidedly the other way."

McCrary on Elections, Sec. 496.

The New York rule has been adopted in New Hampshire, Delaware, Pennsylvania, Indiana, Maryland, Tennessee, and other States.

McCrary on Elections, Sec. 496.

Brightly on Elections, p. 193.

So that the common law doctrine, as adopted in New York and a few other of the States, is, that an action may be maintained by a citizen against an election officer, but he cannot recover unless he alleges that the officer acted wilfully and corruptly, and proves malice, either express or implied.

In Maryland it has been held that a citizen cannot bring an action against election officers, as it is *damnum absque injuria*.

Bevard v. *Hoffman*, 18 Md., 483.

Anderson v. *Baker*, 23 Md., 531.

In the case of *State* v. *Watson*, 2 Speer (S. C.), 97, it was held that "Mandamus is the proper remedy when there is no other appropriate legal remedy for the enforcement of a legal right."

In the case of *The State* v. *Managers of Election for York County*, 1 Bailey, 215, the question of a citizen's right to vote was tested by mandamus, and the Court considered the remedy an appropriate one.

In case of *The State* v. *Bruce et al.*, 3 Brevard, 272, the Justice delivering the opinion said: "The office of Manager of Election is one which deeply affects the interests of society, and, if any one will accept the office, he must take care to act according to law, and according to his best ability and knowledge. If he will not do so, the Courts of General Sessions have the power, and it is the duty of those Courts, to coerce him and compel

obedience to law." In this case the Court did say: "That a party elected to an office could maintain an action against Managers making a false return; and where no person interested would maintain an action, then the Court will grant an indictment against the person making the false return." This was *obiter*, as no question was raised. Not a case can be found in the Reports of South Carolina where a voter ever brought an action against election officers for damages, and the common law right to bring an action in such cases has been abrogated by the judicial policy of the State.

If the action does not lie in the State Courts, it cannot be contended that it will lie in the United States Court, on the ground that Congress has adopted all State laws by its Statutes punishing officers of election, and that voters are entitled to all rights in the United States Court they are entitled to in the State Courts, by reason of concurrent jurisdiction.

But the Act of Congress, Section 2008, Revised Statutes of United States, provides the civil remedy in a case where a voter has been deprived of the right to vote, and prescribes the penalty and its mode of recovery. It is as follows: "Every judge, inspector, or other officer of election, whose duty it is to receive, count, certify, register, report or give effect to the vote of such citizen, who wrongfully refuses or omits to receive, count, certify, register, report or give effect to the vote of such citizen, upon the presentation by him of his affidavit, stating such offer, and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall forfeit the sum of $500 to the party aggrieved by such refusal or omission, to be recovered by an action on the case, with costs, and such allowance for counsel fees as the Court may deem just."

An action must be brought to recover the penalty, and not for damages for the injury—and it must be brought under the Statute.

Where a particular form of action is authorized by Statute, no other can be maintained except that allowed by Statute, and par-

ticularly in the United States Courts, which have no common law powers and jurisdiction.

When a new remedy is given by Statute, plaintiff who would avail himself of it must bring himself within the Statute.

Lowden v. *Moses*, 1 McC. (S. C.), 120.

Love v. *Lowry*, 1 McC., 181.

When a Statute authorizes a proceeding not before allowed by law, and prescribes the mode in which it shall be done, the mode pointed out must be strictly pursued.

Monk v. *Jenkins*, 2 Hill, 575.

When a new jurisdiction is given to, or a new remedy offered by, common law court, neither can be extended beyond legislative grant.

Pringle v. *Carter*, 1 Hill, 53.

This case is brought for damages, and not for the recovery of a penalty as authorized by the Statute.

There is quite a difference between the two actions—one is an action for tort, and the other of debt to recover a penalty.

In *Kennedy* v. *Garlington*, Harper L. (S. C.), 273, the Justice delivering the opinion says: "It does not appear from the process in this case, whether trespass or debt was intended to be brought; and this should appear, to enable defendant to shape his defense. Although the same strictness may not be required in a summons process as in a declaration, yet the cause of action must not be so informally stated as to leave it doubtful whether the plaintiff was suing for a penalty given by Statute or for damages in trespass."

The demurrer to the summons was sustained on the ground stated.

It cannot be successfully contended that the 14th Amendment of the U. S. Constitution, and section 1979 of Revised Statutes of U. S., passed to carry into effect this amendment, confers the right upon the plaintiff to bring this action.

The 14th Amendment prohibits a State from depriving any person of life, liberty or property, without due process of law, and from denying to any person within its jurisdiction, the equal protection of the laws; but it adds nothing to the rights of one citizen against another. It simply furnishes an additional guar-

antee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights, was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the 14th Amendment guarantees, *but no more*. The power of the National Government is limited to the enforcement of this guaranty.

U. S. v. *Reese et al.*, 92 U. S., 214.

U. S. v. *Cruikshanks*, 92 U. S., 542.

Slaughter House Cases, 16 Wall., 73.

The Constitution of the United States has not conferred the right of suffrage upon any one, and the United States have no voters *of their own*.

Nor can it be contended that under the 15th Amendment of the Constitution of the U. S., the plaintiff has the right to bring this action.

The 15th Amendment only operates to prevent the States or the United States from discriminating against a voter on account of race, color or previous condition of servitude.

U. S. v. *Cruikshanks*, *supra*.

The power of Congress to legislate at all upon the subject of voting at State elections, is derived from the 15th Amendment.

The State has not enacted any laws in contravention of the 14th or 15th Amendments, and no person can claim any rights under either of them, unless there has been State legislation contravening them. They add nothing to the rights of one citizen as against another. Hence, this plaintiff derives no authority from the amendments to bring this action.

In his complaint, the plaintiff does not claim that the Court has jurisdiction by virtue of either of these amendments.

To give this Court jurisdiction, it must affirmatively appear upon the face of the complaint. He does not allege that he was deprived of the right to vote by the defendant under the color of any law which was in contravention of the Constitution and laws of the United States.

Turner v. *Union and Planters Bank*, 152 U. S., 461.

Third Proposition.

The complaint does not state facts sufficient to constitute a cause of action, and the Circuit Judge did not err in sustaining demurrer on this ground.

Section 163 of Code of South Carolina is as follows:

"A complaint shall contain a plain and concise statement of facts constituting a cause of action, without unnecessary repetition."

In construing this section, the Supreme Court of South Carolina held, in case of *Chalmers* v. *Glenn*, 18 S. C., 481: "Thus generally it may be said that a cause of action exists when the legal rights of one party are invaded by another. It follows, therefore, that he (the plaintiff) must allege in his complaint all the facts showing his right, and also showing its invasion by the defendant; and the facts thus alleged must in law, upon their face on the one side, entitle him to the right which he claims, and on the other amount to an invasion by the defendant."

The wrong complained of, and which plaintiff seeks to have redressed, is, that he had the right to vote, and was wilfully and maliciously denied this right by defendants.

The facts necessary to be stated to redress the wrong in the State Court (if the Court had jurisdiction) are:

I. That the plaintiff was entitled to vote at the Congressional election in South Carolina.

II. That the defendants wilfully and maliciously denied to him this right to his injury.

III. That the acts were committed within the jurisdiction of the Court.

As before stated, if the Court has jurisdiction, the plaintiff cannot recover, unless he alleges that the election officers acted wilfully and corruptly, and proves malice.

There is an allegation in the complaint that the defendants "unlawfully, wilfully, and injuriously refused to permit plaintiff to vote," &c. This is not sufficient.

In the case of *State* v. *Alexander*, 14 Rich. (S. C.), 247, held: "An offense that is both wilful and malicious contains an ingredient which is not to be found in one that is unlawful merely."

The words employed in the complaint do not imply anything

like malice and corruption, and there must be an allegation in apt words to express this idea.

But this action is brought in the United States Circuit Court. In order to give it jurisdiction, it must be stated that the action arises under the Constitution or laws of the United States, and it must be made to appear on the record that some right, title, privilege or immunity on which the remedy depends has been denied him, under the color of State laws, in contravention of the Constitution of the United States.

"The bare averment of a Federal question is not sufficient."

N. O. Water Works Co. v. *New Orleans*, 142 U. S., 79.

"A real and not a fictitious Federal question is essential to the jurisdiction of the Court."

Hamblin v. *Land Co.*, 147 U. S., 532.

In the case of *Murphy* v. *Ramsay*, 114 U. S., 37, which was an action brought by a voter against election officers for damages, a demurrer was interposed to the complaint on the ground that the complaint did not state facts sufficient to constitute a cause of action. The Court said:

"The cases as to the other defendants, the registration officers, stand on different principles. If they were merely ministerial officers, and if they have deprived the respective plaintiffs of their rights to be registered as voters, in violation of law, they may be responsible in an action for damages. Whether they are so, must depend, in the first instance, not upon what they have done or omitted, but upon the question whether the plaintiffs have severally shown themselves entitled to the right of which, it is alleged, they were illegally deprived.

"And in entering upon the consideration of this point, it is to be observed, in the first place, that the pleader has not in any of the complaints alleged, as a matter of fact, that the plaintiff was a legally qualified voter, entitled to be registered as such. He has preferred, in each case, with variations to suit the circumstances, to aver the existence of specific enumerated qualifications, and the absence of specific and enumerated disqualifications, leaving it to be inferred, as a matter of law, that the plaintiff was a legally qualified voter, and entitled to be registered as such. That legal inference is necessary to complete the case

as stated; and the sufficiency of the statement must depend on whether all the positive qualifications required by law are alleged to have existed, and all the disqualifications affixed by law have been negatived.

"To ascertain this, we have to compare the allegations of the complaint in each case with the requisitions of the law, and, by construction, to determine whether they conform."

So in the case at bar, the sufficiency of the allegations must be determined by the requirements of the law of South Carolina.

Section 3, Article 8, of the Constitution of South Carolina is as follows:

"It shall be the duty of the General Assembly to provide, from time to time, for the registration of voters."

Section 132 of Revised Statutes of South Carolina, 1893, is as follows:

"All electors of the State shall be registered; and no person shall be allowed to vote at any election hereafter to be held unless he shall have been heretofore registered in conformity with the requirements of Chapter VII. of the General Statutes of 1882, and Acts amendatory thereto, or shall be registered as herein required."

Registration was a positive qualification required by law, and it should, therefore, have been alleged in the complaint against defendants as Managers of Election that the plaintiff was registered, even if the action was such an one as could be brought in the State Court.

The complaint is insufficient in statement of facts and form, in that it is an action in trespass for the recovery of damages for a wilful injury, and is not in accordance with the Act authorizing a civil action in this Court for the denial to a voter of the right to vote.

The action authorized is an action of debt for the recovery of a penalty. This kind of an action is essentially different from an action for trespass, and the complaint, therefore, does not state facts sufficient to constitute a cause of action under Section 2008 of Revised Statutes of United States.

Kennedy v. *Garlington*, *supra*.

Lowden v. *Moses*, 1 McC., 120.

Pringle v. *Carter*, 1 Hill, 53.

See *Seely* v. *Knox*, 2 Woods (U. S.), 368, where it is held: "The facts necessary to be stated, in a declaration under the Statute to recover the forfeit, must be such as would authorize a conviction in a criminal prosecution under the section. If it had been averred that the defendant wilfully and maliciously or corruptly decided against the plaintiff's right to vote, well knowing he had such right, and thereby prevented him from voting, it is possible the declaration might be sustained." The case cited in Woods R. was an action on the case to recover the forfeit of $500, provided for in section of Acts of Congress.

The complaint in this case does not allege that the penalty is sought to be recovered under any particular Statute, and does not ask judgment for the recovery of a penalty of $500, but $2,500 damages for a trespass.

So that it makes no difference if the officer is charged in the complaint with having wilfully or corruptly denied plaintiff's right to vote, then it would not be sufficient, because the action is for trespass and not for the recovery of a penalty under Statute.

The whole frame-work of the complaint shows that it was not intended to be an action for a penalty, but an action for trespass, and it does not, therefore, state facts sufficient to constitute such an action as is authorized by the Statute.

Fourth Proposition.

It is contended that it is not necessary, as held by the Circuit Judge, that the complaint should contain an allegation that the plaintiff was a registered voter, because the registration law of South Carolina then in force was unconstitutional. It is respectfully submitted that such law was constitutional.

It may be well to observe that the Constitutional Convention of South Carolina adopted a new Constitution, which went into effect on the 31st day of December, A. D. 1895, and that in pursuance of its requirements, the General Assembly at its session of 1896, passed a new registration law which repealed the law in force at the time this action was instituted.

The following is the provision of the Constitution of 1868 as to registration of voters: Section 3, Article 8:

"It shall be the duty of the General Assembly to provide from time to time for the registration of voters."

In pursuance of this requirement, the General Assembly passed the registration law.

I maintain that:

I. That the right of suffrage comes from the State and from the State alone, and is not a vested right.

II. That the qualifications for the exercise of the right are to be determined by the sovereign power of the State in its discretion, save only as same is affected by the amendments to the Constitution of the United States.

III. That amendments to the Constitution of the United States are limited solely to a discrimination on account of race, color or previous condition of servitude (15th Amendment).

IV. That if the law itself does not discriminate in terms, that the law is valid, though officials may actually discriminate.

V. That discrimination alleged in any individual acts by the Supervisor [redacted] is a matter to be redressed only by making the same a ground of exception, and thereby make the same a Federal question for the decision of the appellate tribunal in determining the right of the suitor to vote under the qualifications fixed by the Constitution.

VI. That the Act of Congress of 1868, assuming that the State of South Carolina was not a member of the Federal Union, and prescribing qualifications and conditions for the re-entry of such State into the Federal Union, was null and void under the Constitution of the United States, on the ground that, in the eye of the law, the State of South Carolina never dissolved her relations to the Federal Union, was always a member thereof, and no conditions could be named by Congress for re-entry.

VII. Again, the Act of Congress of 1868 is void in that it prescribes special conditions for three States named therein, and was not a uniform system obtaining throughout the Federal Union.

VIII. Again, the Act of Congress of 1868 was void in that it assumed to determine and fix in the action of the State qualifications and conditions of suffrage which, under the Constitution of

the United States, were subject only to the constitutional regulations contained in the United States Constitution.

IX. Again, the Act of Congress of 1868 is void in that Congress assumed to exercise legislative power outside the constitutional domain committed to it by the Constitution of the United States, in that it made a condition of re-entry or continuance as a State of the Federal Union rights of suffrage in individual States over which, under the Constitution of the United States, the legislative power of Congress did not extend.

X. Again, the Government of the United States, being a limited Government, as defined by the Constitution, powers of Congress being therein expressed, the Act of Congress of 1868 is void as being outside of any express power given to Congress under the Constitution of the United States.

Murphy v. *Ramsey*, 114 U. S., 44, 45.
Ex Parte Yarborough, 110 U. S., 664–5.
Bradwell v. *Ill.*, 16 Wall., 130.
Slaughter House Cases, 16 Wall., 36, 37.
Minor v. *Happersett*, 21 Wall., 162, 175.
Elk v. *Wilkins*, 112 U. S., 94, 101, 102.
U. S. v. *Cruikshanks*, 92 U. S., 542.
U. S. v. *Reese*, 92 U. S., 215.
Strauder v. *W. Virginia*, 100 U. S., 303.
Ex Parte Virginia, 100 U. S., 303.
Bowman v. *Lewis*, 101 U. S., 22.
Neal v. *Delaware*, 103 U. S., 370.
Bush v. *Kentucky*, 107 U. S., 110.
In re Shibuya Jugiro, 140 U. S., 291, 297.
In re Wood, 140 U. S., 278, 282, 284.
Gunn v. *Barry*, 15 Wall., 622, 623.
Texas v. *White*, 7 Wall., 700.
Mississippi Case, MMS. Dec., 1898.

As a matter of fact, the law of South Carolina, so far from discriminating, expressly declares that there shall be no discrimination on account of race, color or previous condition. Section 131 of Revised Statutes of South Carolina provides: "Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named

in the Constitution, without distinction of race, color or previous condition, who shall have resided in the State for one year, and in the county in which he offers to vote for sixty days next preceeding any general election, shall be entitled to vote: *Provided*, That no person while kept in any alms-house or asylum or of unsound mind, or confined in any public prison, or who shall have been convicted of treason, murder, burglary, larceny, perjury, forgery or any other infamous crime or duelling, shall be allowed to vote."

See Section 132, hereinbefore quoted, requiring registration as a qualification for voting.